

ORIGINAL

California Cable Television Association
August 15, 1996
CC Docket No. 96-149

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
)
Implementation of the Non-Accounting)
Safeguards of Sections 271 and 272 of the)
Communications Act of 1934, as amended;)
)
and)
)
Regulatory Treatment of LEC Provision)
of Interexchange Services Originating in the)
LEC's Local Exchange Area)

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COMMENTS
OF THE CALIFORNIA CABLE TELEVISION ASSOCIATION

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**COMMENTS
OF THE CALIFORNIA CABLE TELEVISION ASSOCIATION**

The California Cable Television Association ("CCTA") hereby submits its comments on the Notice of Proposed Rulemaking ("NPRM") in the above-captioned proceeding.¹ CCTA is a trade association representing cable television operators with over 400 cable television systems in California, including both small rural systems and national multiple systems operators. CCTA's members compete directly with local telephone companies and their affiliates in the provision of video services. CCTA's members are also potential

¹ In the Matter of Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended; and Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area, Notice of Proposed Rulemaking, CC Docket No. 96-149, FCC No. 96-308 (July 18, 1996) ("NPRM").

facilities-based competitors of local telephone companies in the provision of local exchange telephone services to the public in California.

In these comments, CCTA addresses the Federal Communications Commission's ("FCC" or "Commission") NPRM regarding the nondiscrimination safeguards imposed on Bell Operating Companies ("BOCs") and their affiliates by Section 272 of the Telecommunications Act of 1996 ("1996 Act" or "Act"). Specifically, CCTA urges the Commission to find: that the definition of a BOC within the Act includes BOCs and their affiliates; that the provision of local and interLATA services by the same affiliate is contrary to the separate affiliate requirement of the 1996 Act; that any bundling or joint marketing of local services with other services, including video or interexchange services, must be fully in accordance with applicable pricing and nondiscrimination requirements, regardless of whether that bundling is by the BOC or any affiliate; and that, to the extent the FCC permits the offering of local exchange services by a wholly-owned BOC affiliate within the BOC's service area, the affiliate must be classified as a dominant carrier.

INTRODUCTION AND SUMMARY

Pursuant to the 1996 Act, a BOC seeking entry into the in-region interLATA services market must abide by the requirements of Sections 271 and 272, regarding conditions of entry, separate affiliates, and other safeguards against anticompetitive conduct.² Section 271

² 47 U.S.C. §§ 271, 272 (1996).

requires that the requesting BOC meet a competitive "checklist,"³ so as to ensure that there will be a facilities-based competitor to the BOC's local exchange services.⁴ Section 272 imposes safeguards on certain BOC activities, most notably interLATA services, including the requirement to establish a separate affiliate,⁵ nondiscrimination obligations,⁶ and joint marketing restrictions.⁷ As the FCC noted in the NPRM, these restrictions are intended to prevent improper cost allocations and address concerns that the BOCs "could potentially use local exchange and exchange access facilities to discriminate unlawfully against competitors in order to gain a competitive advantage for their affiliates that engage in competitive activities."⁸

In California and elsewhere, however, the BOCs appear to be implementing a strategy designed to evade these core public interest safeguards.⁹ CCTA is particularly concerned

³ 47 U.S.C. § 271(c)(2).

⁴ See Conference Report on S.652, 104th Cong., 2d Sess., Rep. No. 104-458, at 147-48. Indeed, Congress specifically noted the potential for the cable television industry to offer such "meaningful facilities-based competition." Id.

⁵ 47 U.S.C. § 272(a).

⁶ 47 U.S.C. § 272(c).

⁷ 47 U.S.C. § 272(g).

⁸ NPRM at ¶¶ 12-13.

⁹ See "Bells Sidestep Local Service Regulations," Wall Street Journal, July 15, 1996 at A3 (noting the proposals of Pacific Telesis Group, Ameritech Corp. and Bell Atlantic Corp. to sell local services through the long distance affiliates); see also "Bells Seek to Create Unregulated (continued...)

with the proposal of Pacific Bell Communications ("PBCom"), a newly-minted, wholly-owned affiliate of Pacific Telesis to provide and market both local and long distance services.¹⁰ Given the substantial public interest goals of the 1996 Act and the clear intent of Congress that certain safeguards adhere to promote fair and robust facilities-based competition, the Commission should not permit Pacific Telesis, or any other BOC, to evade the law through the establishment of affiliates which essentially do in their own service areas that which the BOC cannot.¹¹ Such a result would undermine the 1996 Act and thwart the purposes of the Act. Specifically, CCTA urges the Commission to conclude that the establishment of an affiliate that provides both local exchange and interLATA services in the BOC's service area violates the separate affiliate requirement of the Section 272(a) and (b) of the 1996 Act.

In addition, to help prevent anticompetitive abuses by the BOCs through the use of affiliates which facilitate the evasion of regulatory safeguards, the Commission should affirm its tentative conclusion that "Congress did not intend for a BOC to be able to move

⁹(...continued)
Units; Plan Would Allow Affiliates to 'Bundle' Phone Services in Parent's Area," Washington Post, July 16, 1996 at C2.

¹⁰ Both PBCom and Pacific Bell are wholly owned subsidiaries of Pacific Telesis.

¹¹ This is not to suggest, however, that these same requirements apply outside of the BOC's service region. See, e.g., Section 271(b)(2), 47 U.S.C. § 271(b)(2) (distinguishing out-of-region services).

incumbent local exchange operations to an affiliate¹² Swift and decisive action in this regard is particularly needed given the magnitude of the potential problem. If the Commission permits corporate telecommunications structures similar to PBCo to be established, the remaining BOCs could also escape the requirements of the Act through separate subsidiaries, rendering the safeguards of the Act meaningless, and profoundly limiting competition in the local exchange market.

Finally, the Commission should find that BOC affiliates that offer local exchange services are dominant in their service area, so as not to undermine the potential for the development of competition.

I. THE PROPOSAL OF PACIFIC TELESIS TO ESTABLISH PACIFIC BELL COMMUNICATIONS IS DESIGNED TO EVADE THE 1996 ACT AND WILL HAVE ANTICOMPETITIVE CONSEQUENCES

The separate affiliate and nondiscrimination safeguards of Section 272 of the 1996 Act, as well as the safeguards and "checklist" of Section 271, were intended to "protect subscribers to BOC monopoly services, such as local telephony, against the potential risk of having to pay costs incurred by the BOCs to enter competitive services" and "to protect competition in those markets from the BOC's ability to use their existing market power in local exchange services to obtain an anticompetitive advantage...."¹³ Given the long history

¹² NPRM at ¶ 79.

¹³ NPRM at 5.

of concern about anticompetitive abuses by these dominant local exchange carriers,¹⁴ the enacted BOC safeguards acknowledge the need to ensure that as competitive markets are opened, anticompetitive practices are not permitted.

The desire of the BOCs to escape these safeguards, however, is explicitly demonstrated by the application of PBCom for a Certificate of Public Convenience and Necessity ("CPCN") in California, to provide interLATA, intraLATA and local exchange services.¹⁵ In its eight page application, PBCom, a new, wholly-owned subsidiary of Pacific Telesis, and the sibling of the state's dominant local exchange carrier, Pacific Bell, seeks to provide a "full range of facilities-based and resold telecommunications services, including without limitation, interLATA, intraLATA and local exchange telecommunications throughout the state of California."¹⁶ Moreover, PBCom requests that, as a newly-created competitive entity without an entrenched customer base, it be treated as a non-dominant

¹⁴ See Comments of the California Cable Television Association in CC Docket No. 96-112, Allocation of Costs Associated with Local Exchange Carrier Provision of Video Programming Services, May 31, 1996 ("Cost Allocation Comments"); Comments of the California Cable Television Association in CC Docket No. 95-20, Computer III Further Remand Proceedings, April 7, 1995 at 9; Reply Comments of the California Cable Television Association, May 19 1995, at 8-12; see also Reply Comments of AT&T Corporation in CC Docket 96-112, June 12, 1996, at 4.

¹⁵ See Application of Pacific Bell Communications for a Certificate of Public Convenience and Necessity to Provide InterLATA, IntraLATA and Local Exchange Telecommunications Services Within the State of California, Application No. 96-03-007, March 5, 1996 ("PBCom Application"), attached hereto as Attachment A.

¹⁶ See PBCom Application at 2.

carrier.¹⁷ According to PBCom, despite the common parent, Pacific Bell is the party which controls the local exchange bottleneck facilities, and not PBCom.

Many concerns which arise out of the PBCom Application are at the heart of the Commission's NPRM. The creation of PBCom will most certainly be used by Pacific Bell as a vehicle to ignore and avoid the pricing rules, geographic deaveraging and bundling safeguards to which Pacific Bell, as a dominant carrier, is subject in California, as well as federal safeguards imposed by the Act and the Commission. For example, if local exchange services are deemed competitive, or even partially competitive under California rules, Pacific Bell will be entitled to provide its local exchange services under contract, and could provide its affiliate with contractual terms carefully crafted so as to preclude other carriers from utilizing those same contractual rates, terms and conditions, despite the attempts by regulators to detect and prevent abuses.

Indeed, it appears that the entire function of PBCom is to serve as the unregulated alter ego of Pacific Bell. As proposed, it appears that Pacific intends for PBCom, unlike Pacific Bell, to be able to offer bundled services subject to lesser regulatory obligations. In

¹⁷ See Pre-Hearing Conference Statement of Pacific Bell Communications, Application No. 96-03-007, at 4,5. Significantly, despite the fact that PBCom is Pacific Bell's vehicle for entry into the long-distance market, Pacific Bell has not been made a party to the application proceeding. PBCom has successfully argued so far that since the only concern is the ability to discover information from Pacific Bell, and PBCom pledges to obtain any information such information from Pacific Bell and make it available, Pacific Bell is not necessary to the consideration of the CPCN application. See Application of Pacific Bell Communications, Application 96-03-007, Ruling of Administrative Law Judge Glen Walker, June 13, 1996.

essence, then, any sale of network services by Pacific Bell to an affiliate which does not have pricing and other restraints is a transfer of the network function itself. As the FCC has tentatively concluded, the transfer of network capabilities would evade safeguards against discrimination.¹⁸ Consequently, the FCC should expressly bar the use of such "pass through" affiliates which allow Pacific Bell to engage in prohibited pricing practices and preserve its market base, using PBCom as the prohibited monopoly leveraging vehicle.

As noted by the FCC, the nondiscrimination provisions of Section 272(c) apply to the conduct of a BOC alone and the provisions of Section 272(e) apply only to an affiliate that is an incumbent local exchange carrier ("LEC").¹⁹ To the extent the BOCs seek to establish affiliates which are not subject to these and other safeguards provided in the Section 271 "14 point checklist,"²⁰ the FCC should clearly deem such activity impermissible.

Significantly, the 1996 Act specifically imposes a separate affiliate requirement upon the BOC provision of interLATA and other services.²¹ As the Commission recognized in the NPRM, Congress intended for there to be a wholly separate entity to provide interexchange services from the entity that offers local exchange services so that the BOCs could not leverage their dominant market position in the local market to gain an unfair

¹⁸ NPRM at ¶¶ 70-71.

¹⁹ NPRM at ¶ 70, n.136.

²⁰ 47 U.S.C. § 271(c)(2)(B).

²¹ 47 U.S.C. § 272 (a), (b).

competitive advantage in the interexchange area.²² Consequently, the Commission should make clear that it is unlawful for that same affiliate to then turn around and offer “re-sold” local exchange services on a bundled basis with interLATA services, in effect re-creating the very structure that Congress barred. In this regard, CCTA agrees that the definition of a BOC set forth in Section 153(4) of the Act, which encompasses “any successor or assign” of a BOC “that provides wireline telephone exchange services,”²³ indicates that an affiliate such as PBCom should be subject to the full force of the safeguards as is its parent BOC.

Anticompetitive scenarios arising out of these affiliate structures are not difficult to posit. For example, the affiliate could sell the local exchange service purchased from Pacific Bell at or below the wholesale rate charged by Pacific Bell, thereby maintaining Pacific Bell’s local exchange market share at the expense of more efficient competitors. If PBCom is designated as non-dominant, so that pricing restrictions would no longer adhere, these unlawful practices could be difficult for regulators to detect and could ultimately derail the development of fair competition. Similarly, because the financing for both PBCom and Pacific Bell comes from Pacific Telesis, there will be less incentive on the part of Pacific Telesis to continue to invest in its regulated affiliate. Instead, the incentive will be to develop new network functions or services and assign them to the lightly-regulated affiliate.

²² NPRM at ¶¶ 12-13 .

²³ 47 U.S.C. § 153(4).

Such a procedure would insulate the resale of those functions from the nondiscrimination and unbundling requirements of the FCC and the states.²⁴

Indeed, Pacific Telesis has historically attempted to impose on its ratepayers the costs and risks of their competitive ventures on numerous occasions. A NARUC audit of Pacific Telesis uncovered important instances of cross-subsidization of competitive services by regulated telephone services amounting to hundreds of millions of dollars of investment and expense in competitive broadband development.²⁵

Moreover, in recently proposed Cost Allocation Manual ("CAM") Revisions filed by Pacific Bell, Pacific Bell has failed to specify payment costs and how they are charged to its affiliates, if they are at all. For example, with respect to the Internal Telecommunications Service, Pacific Bell has stated that "[t]his new service is provided by Pacific to Pacific Bell Communications. There is no impact to regulated operations."²⁶ This failure to identify costs to "unregulated" activities of an affiliate becomes even more onerous if one assumes

²⁴ See, e.g., First Report and Order in CC Docket Nos. 96-98, 95-185, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, released August 8, 1996.

²⁵ See National Association Regulatory Utility Commissioners, An Audit of the Affiliate Interests of the Pacific Telesis Group, July 1994. Specifically, the audit revealed that Pacific made certain infrastructure modifications to enhance its competitive services at the expense of the ratepayers, id. at B-9; it employed the same personnel on competitive and non-competitive applications without separately accounting for the time spent on each project, id. at B-167; and cross-subsidized its competitive electronic publishing ventures using regulated services revenue. id. at C-85. See also Cost Allocation Comments at pp. 5-12.

²⁶ Proposed CAM Revisions at 9.

that the affiliate, PBCOM, is the actual BOC provider of some or all local retail services, and considered by Pacific to be "unregulated."²⁷ If the Commission is to fulfill the Congressional goal of an orderly and fair transition to competition, then it must ensure that its safeguards are effective and broad enough to prevent these and other abuses.²⁸

II. THE COMMISSION SHOULD NOT RELAX THE DOMINANT CARRIER CLASSIFICATION OF BOC AFFILIATES THAT OFFER LOCAL EXCHANGE SERVICES

In the NPRM, the Commission inquires as to whether the "potential risks of BOCs using market power in local exchange and exchange access services to obtain an advantage in the markets for BOC affiliates that provide in-region, interstate, domestic interLATA services will be sufficiently limited such that [it] can relax the dominant carrier classification that under [its] current rules would apply to such interLATA services provided by a BOC

²⁷ See PBCOM Application at 7.

²⁸ Likewise, Southwestern Bell Telephone Company recently filed an Application for Review, urging the Commission to reverse a determination that affiliate transactions involving the provision of nonregulated services must comply with the Commission's affiliate transactions rules. In the Matter of Citizens Utilities Company Permanent Cost Allocation Manual for the Separation of Regulated and Nonregulated Costs, AAD 94-6, Memorandum Opinion and Order, DA 96-556, released April 22, 1996 (CCB) ("Citizens CAM MO&O"). As CCTA noted in opposing the Application, "[T]here is an increased risk that ratepayers of regulated services will be penalized by a carrier's business interactions with its affiliate, whether they involve decisions to sell an asset or service at a price that is below or above cost. The 1996 Act expressly protects telephone ratepayers from bearing the brunt of LEC's decisions on costs related to competitive service offerings. See Reply Comments of CCTA in Opposition to Application for Review, In the Matter of Citizens Utilities Company Permanent Cost Allocation Manual for the Separation of Regulated and Nonregulated Costs, AAD 96-4, AAD 96-57, July 30, 1996.

affiliate.”²⁹ Based upon its experiences and the likely behavior of the BOCs and their affiliates in the future, CCTA urges that the Commission conclude that when the BOC or its affiliate offers local exchange services, it must be classified as dominant. For now and the immediate future, the BOCs still retain complete dominance in their provision of local telecommunications services.³⁰ As the Commission noted in the NPRM, if the goals of the Act are to be achieved and robust competition is to develop, safeguards are necessary to ensure that the BOCs cannot leverage their existing market power in local exchange services to obtain an anticompetitive advantage in those new markets the BOCs seek to enter.³¹ Consequently, the Commission should not permit any BOC affiliate that offers local exchange service, regardless of what other services it may offer, to be designated as non-dominant in its region or otherwise escape full application of competitive safeguards.

Events in California indicate that the BOCs’ considerable leverage to engage in anticompetitive conduct should compel the Commission not to relax its dominant carrier classification for local exchange services provided by a BOC affiliate within its service area.

²⁹ Id.

³⁰ Indeed, in a recent decision, the California Public Utilities Commission (“CPUC”) noted that “[t]he market dominance of the LECs justifies the retention of the existing regulatory rules governing the LECs for the present time.” See Decision 96-03-020 in Docket R.95-04-043, I.95-04-044, Order Instituting Rulemaking on Commission’s Own Motion into Competition for Local Exchange Service, Order Instituting Investigation on Commission’s Own Motion Into Competition for Local Exchange Service, March 13, 1996, at 68.

³¹ NPRM at ¶ 3.

Pacific Telesis recently created another subsidiary, Pacific Bell Extras, to serve as a vehicle to transfer subscriber information among all Pacific Telesis affiliates. Under this scheme, subscribers to Pacific Bell services could receive promotional awards, depending upon the amount of services they use, by "joining" the Pacific Bell awards program, to be administered by Pacific Bell Extras.³²

In order to qualify for these award benefits, subscribers are asked to sign a release, which is indecipherably provided below the signature line for joining the program³³ and which authorizes Pacific Bell to provide to all its affiliates, all the customer's subscriber information.³⁴ As a result, Pacific Bell can capitalize on this competitive advantage, which has been created as a result of its monopoly possession of subscriber information. This type of behavior should serve as a warning that the Commission cannot relax its dominant carrier classification as to BOC affiliates that offer local exchange services.

Neither should the FCC be swayed by the assertion that because the affiliate will start out with no market share, it should be treated as a non-dominant carrier.³⁵ As an entity

³² The Pacific Bell Extras Program is presently the subject of a complaint before the United States District Court, Northern District, AT&T Communications of California, Inc. v. Pacific Bell, et al., (C.96-1691 SBA), May 7, 1996.

³³ Examples of such releases are attached hereto as Attachment B.

³⁴ Just as under federal law, under California law, the use of subscriber information is restricted unless there is subscriber consent. See Cal. Pub. Util. Code § 2891 (1996), "Telephone and Telegraph Customer Privacy; Consent to Release Information."

³⁵ See PBCOM Application at 7.

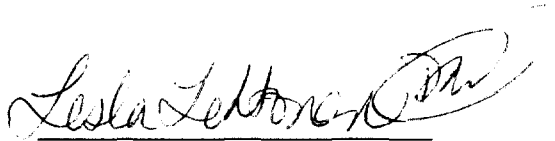
affiliated with the dominant provider in the state, there will be enormous advantages, especially in terms of customer perception. Indeed, there is every reason to expect that the marketing practices and techniques of these affiliates will seek to capitalize on their parental lineage and may well use some or all of the logos or other branding mechanisms of the BOC in an effort to pursue market share.

CONCLUSION

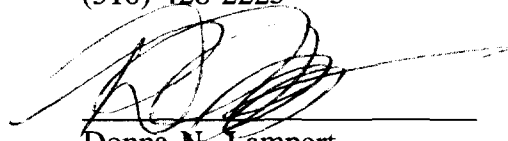
For the reasons set forth and discussed herein, CCTA respectfully requests that the Commission find that the definition of a BOC within the Act includes BOCs, their affiliates, successors and assigns; that the provision of local and interLATA services by the same affiliate violates the separate affiliate requirement and is inconsistent with the goals of the 1996 Act; that any bundling or joint marketing of local services with other services, including video or interexchange services, must comply fully with applicable pricing and

nondiscrimination requirements, regardless of whether that bundling is by the BOC or any affiliate; and that to the extent a BOC affiliate offers local exchange services in its service area, that affiliate must be classified as a dominant carrier.

Respectfully submitted,



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Dated: August 15, 1996

ATTACHMENT A

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE
STATE OF CALIFORNIA

Application of Pacific Bell Communications)
for a Certificate of Public Convenience)
and Necessity to Provide InterLATA,)
IntraLATA and Local Exchange)
Telecommunications Services Within the)
State of California)
_____)

Application No. 96-03-007

**APPLICATION OF PACIFIC BELL COMMUNICATIONS
FOR A CERTIFICATE OF PUBLIC CONVENIENCE
AND NECESSITY TO PROVIDE INTERLATA, INTRALATA
AND LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES.**

Pacific Bell Communications ("PB Com") submits this Application for a Certificate of Public Convenience and Necessity, under Public Utilities Code Section 1001, to provide facilities-based and resold interLATA, intraLATA, and local exchange telecommunications services in the State of California. Applicant seeks the full extent of authority allowed by the Commission as a non-dominant carrier.

PB Com submits the following information in support of its Application:

1. Name and Address of Petitioner [Rule 15(a)]: Applicant's legal name is Pacific Bell Communications. Applicant is a California corporation with its principal place of business located at 140 New Montgomery St., Room 809, San Francisco, California 94105. Applicant is a wholly owned subsidiary of Pacific Telesis which has

provided telecommunications services to residents of the State of California since 1906.

2. Identity of Pacific Bell Communications: Articles of Incorporation [Rule 16(a)]: A certified copy of Applicant's Articles of Incorporation is attached as Exhibit A.

3. Communications [Rule 15(b)]: Correspondence and other communications with regard to this Application should be addressed to:

David Discher, Senior Counsel
Pacific Telesis Legal Group
140 New Montgomery Street
Room 1510
San Francisco, CA 94105
(415) 542-7747

and

William H. Booth
Jackson Tufts Cole & Black, LLP
650 California Street
San Francisco, CA 94108-2613
(415) 433-1950

4. Description of Service [Rule 18(a)]: Applicant seeks authority to provide a full range of facilities-based and resold telecommunications services including, without limitation, interLATA, intraLATA, and local exchange telecommunications services throughout the State of California.

5. Service Area [Rule 18(c)]: Applicant seeks authority to provide both facilities-based and resold telecommunications services throughout the State of California, except in those areas where local exchange competition is not authorized. A map of Applicant's proposed service territory is attached as Exhibit B.

6. Financial Responsibility [Rules 17 and 18(g)]: PB Com is a wholly owned subsidiary of Pacific Telesis. Attached as Exhibit C are the most recently available

financial statements for Pacific Telesis. Exhibit D is a letter from Pacific Telesis confirming that it will fund PB Com's financial requirements during the first year of its operation, and that it will provide the \$540,000 of uncommitted cash required by D.90-08-032.¹ These exhibits demonstrate that PB Com has the financial resources necessary to carry out its responsibilities as a provider of telecommunications services.

7. Construction [Rules 18(a), 18(d), and 18(f)]: Applicant proposes to provide telecommunications services either by means of facilities which will be constructed or by means of facilities that will be provided by other certificated carriers, or both. PB Com may construct one or more switches provided by a major vendor or vendors and may lay cable in public rights of way. The switches will be housed in commercial buildings and the cable will be placed in existing structures. The proposed construction will not be disruptive or disturbing to residential or business communities. All necessary permits will be obtained from the appropriate local governmental agencies. PB Com will comply with all health and safety regulations and will obtain any required health and safety permits. Because we have not yet determined the extent of the facilities we will build, we are presently unable to estimate construction costs.

8. Proponent's Environmental Assessment [Rule 17.1]: Applicant has provided a Proponent's Environmental Assessment ("PEA") as Exhibit E.

9. Customers [Rule 18(j)]: The projected number of customers for PB Com's proposed service is attached as Exhibit F.

¹ D.90-08-032 required a showing of cash or cash equivalent resources equal to \$400,000. This amount was to be escalated by 5% per year beginning in 1991.

10. Pacific Bell Communications Qualifications [Rule 15(c)]: The information contained in this Application and the attached exhibits demonstrate PB Com's ability to provide high quality and economical telecommunications services to California subscribers. Biographies of key officers are attached as Exhibit G.

11. Public Convenience and Necessity [Rule 18(e)]: This Commission and the California State Legislature have both encouraged the establishment and expansion of competitive telecommunications services. The CPUC's infrastructure report recommends increased competition in both the toll and local exchange markets. Section 709.2 of the Public Utilities Code, adopted by the California State Legislature in 1994, directs the Commission to authorize full competition for interLATA services. Approval of this Application will bring increased competition to these markets, as PB Com will provide competitive telecommunications services to residents of the State of California either through the construction of new facilities or through the resale of the services of other carriers, or both.

The *Telecommunications Act of 1996* permits affiliates of Bell Operating Companies to provide interLATA services, provided they are able to meet a series of requirements, principally involving the availability of access and interconnection arrangements to companies desiring to enter the intraLATA market. Included in those requirements is a "Competitive Checklist" for evaluation of the access and interconnection arrangements to be made available by local exchange companies to non-affiliated companies.

The Federal Communications Commission ("FCC") is charged with the responsibility of evaluating the compliance with this checklist in an expeditious fashion.

Its process is currently underway. PB Com understands that the FCC is presently developing rules and procedures to carry out its mandate with respect to the entry of the BOCs and their affiliates into the interLATA markets. The FCC is required by statute to have these rules in place in 180 days after February 8, 1996 and it is obligated to process applications to enter the interLATA market within 90 days after an application is filed. This federal process should, therefore, result in approval for our entry into the interLATA market late in 1996 or early in 1997. We also believe that the public interest will be served if we simultaneously receive authority from this Commission to enter the interLATA market, as well as other telecommunications markets in California.

The California legislation, Section 709.2 of the Public Utilities Code, sets forth its own list of requirements which must be met before such interLATA authority may be granted by the Commission. It contains four principal requirements. First, competitors must be afforded "fair, nondiscriminatory and mutually open access" to exchanges, including the fair unbundling of exchange facilities. This evaluation is currently underway in the Commission's OANAD proceeding, with procedural dates having been set to result in an October 1996 decision. PB Com expects that this requirement of Section 709.2 will be met in the OANAD proceeding and that the Commission will be able to reference that compliance in this Application.

Second, the Commission must determine that there is no anticompetitive behavior by the local exchange company, including "unfair use of subscriber information or unfair use of customer contacts" generated by the provision of local exchange service. Existing affiliate transaction rules require payment of a referral fee

when Pacific Bell successfully sells an affiliate's service. PB Com will comply with these rules.

Third, the Commission must determine that there is no improper cross-subsidization of interLATA service by the local exchange carrier by requiring the maintenance of separate accounting records. PB Com will demonstrate that its structural separation from its affiliate, Pacific Bell, goes well beyond the requirement for separation of accounting records. This structural separation, in addition to its application of the Commission's existing affiliate transaction rules, will meet this test.

Finally, Section 709.2 provides that the Commission must determine that there is "no substantial possibility of harm to the competitive intrastate interexchange market". These words are taken from the Modified Final Judgment and have been interpreted by the federal courts. In U.S. v. Western Elec. Co., 900 F.2d 283, 296 (1990), the District of Columbia Circuit stated that these words mean that "unless the entering BOC [PB Com] will have the ability to raise prices or restrict output in the market it seeks to enter" there can be no possibility that it can use its monopoly power to impede competition. PB Com will demonstrate that because it will have no market share when it enters the interLATA market, and it therefore will have no ability to raise prices or restrict output in that market. Indeed, its presence in the interLATA market will add to the level of competition, will increase customer choice and options, will tend to lower prices in that market, and will thus provide clear benefits to California consumers. PB Com will meet this test in any hearings on its Application.

12. Tariffs [Rule 18(h)]: PB Com's proposed tariffs are attached as Exhibit H. Since PB Com has not yet seen the Commission's decision on "resale", the proposed

prices are tentative.

13. Statement Under General Order No. 104-A [Rule 18(j)]: There are no matters to be reported under General Order 104-A.

14. Certificate of Service [Rule 18(b)]: Attached to this Application is a Certificate of Service listing the entities and individuals with which PB Com may compete. Copies of this Application have been served on these entities and individuals. PB Com requests that the Commission grant a waiver of the rule 18(b) requirement that petitioner certify service on the "cities or counties within which service will be rendered". As PB Com requests authority to serve in all areas of California where competition is authorized, provision of notice to each city and county would be unduly burdensome.

15. Demonstration of Compliance with Rules: Exhibit I to this application demonstrates our compliance with Commission rules governing applications for CPCNs.

16. Request for Non-Dominant Treatment: PB Com has been established as a separate Pacific Telesis subsidiary to comply with provisions in the *Telecommunications Act of 1996*. As a separate subsidiary, PB Com will start business with no existing customer base and thus, no market share. As it begins offering service under this arrangement, PB Com will clearly be a nondominant participant in this industry. Applicant requests the same regulatory treatment for its proposed telecommunications services as is afforded other non-dominant carriers, including exemption from the requirements of Public Utilities Code Sections 816-830 and 851-855.